



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1993

Ms. Lisa A. Brown
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR93-755

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 17867.

The San Jacinto College District (the "district") received two open records requests from a former district employee for, *inter alia*, the following information:

A computer list (District-wide) of all students currently registered who are classified 3R, 8R and 4A -- who have no skill levels identified.

The requestor also seeks specific records on a named student, including her "Fall 1992 counseling form," "TASP Information Sheet," current telephone number and address, and class schedule. Finally, the requestor seeks a copy of his own personnel file. You contend that portions of the requested records come under the protection of former sections 3(a)(1), 3(a)(11), 3(a)(14), and 14(e) of the Open Records Act (now found at sections 552.101, 552.111, 552.114, and 552.026, respectively, of the Government Code).

Section 552.114(a) requires that the district withhold:

information in a student record at an educational institution funded wholly or partly by state revenue.

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational institution of post-secondary education that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. See 20 U.S.C. § 1232g(d). "Education records" means those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A).

This office agrees that the information you have submitted to this office as Exhibit C constitutes "education records" for purposes of FERPA and, with certain exceptions, must be withheld in their entirety. However, because the named student's home address, telephone number, and course schedule constitute directory information, the district must release this information. See 20 U.S.C. § 1232g(a)(5)(A); Open Records Decision No. 244 (1980).

We note that the interoffice memorandum you submitted to this office as Exhibit D also constitutes an "education record" to the extent that it contains information about identifiable students. However, information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). After reviewing the memorandum, we conclude that the identities of particular students would be adequately protected by the redaction of the students' names and social security numbers. Accordingly, this is the only information the district may withhold from the memorandum pursuant to section 552.026 of the Government Code in conjunction with FERPA.

You also contend that the handwritten notes contained in the margins of the memorandum constitute advice, opinion, or recommendation that comes under the protection of section 552.111 of the Government Code. Section 552.111 protects interagency and intraagency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio

1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993), this office held that:

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters (Emphasis in original.)

The handwritten notes at issue here clearly pertain to a purely personnel matter and as such do not come under the protection of section 552.111. The district therefore must release the memorandum, including the handwritten notes, in its entirety, except as discussed above.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/RWP/rho

Ref.: ID# 17867
ID# 17886

Enclosures: Open Records Decision No. 615
Submitted documents

cc: Dr. James Grant
12807 Old Pine
Houston, Texas 77015
(w/o enclosures)